IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16/06/2003

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THE HON'BLE MR.JUSTICE P.D. DINAKARAN

Writ Petition No.39012 of 2002

P. Mani .. Petitioner

-Vs-

1. The Managing Director
State Express Transport Corporation Ltd.
Pallavan House, Madras 2.

2. The Branch Manager
State Express Transport Corporation Ltd.
Trivandrum Branch
Trivandrum. .. Respondents

For Petitioner :: Mr.C. Prakasam

For Respondents :: Mr.G. Munirathnam

:O R D E R

The petitioner was dismissed from service by the first respondent on the ground of medical unfitness by proceedings dated 13.11.1999 and his request for alternate employment, as per G.O. Ms.No.746, Transport, dated 2.7.1981, also rejected. Hence, the above writ petition for a writ of Certiorarified Mandamus calling for the entire records in so far relates to the first respondent in its proceedings No.05/1377/P2/SETC/TN.Div.II/96 dated 13.11.99 and quash the same and consequently, direct the respondents to reinstate the petitioner in the alternative post or Conductor in the State Express Transport Corporation Ltd., Madras.

2. I am obliged to refer the proceedings of the Thiruvalluvar Transport Corporation Ltd. made in S.S.No.746 Trpt. dated 2.7.1981, which reads as follows:
" THIRUVALLUVAR TRANSPORT CORPORATION LIMITED Copy of S.S.No.746 Trpt dated 2.7.1981

State Transport Undertaking - Employees invalidated on Medical grounds due to eye defect or any other ailment - provision of alternative employment - Orders - Issued.

During the budget session, held on 23.4.1981 the Minister (Transport) announced interalia in the Legislature Assembly, that the workers who are declared unfit for continuing in the same posts by Doctors, while in service because of eye defect or any other ailments, will be provided with alternative employment in posts like "Helpers" "afresh" depending upon their qualifications, experience and suitability for the new post, after settling their service benefits.

2. The Government accordingly direct that the works is in State Transport undertakings who are declared unfit for continuance in the same posts, by doctors, while in service, because of eye defect or any other ailment be discharged on medical grounds and their service benefits settled. They should be subsequently provided with alternative employment in posts like "Helpers" depending upon their qualification and experience and suitability for the new posts, without consulting the Employment Exchange. They should be appointed as fresh entrants only in the scale of pay or consolidated pay admissible to the new posts and their services terminated on the date on which they attain the age of superannuation.

3. This order issues in concurrence of the Labour & Employment Department vide its U.O.No.26643/N1/81-1 dated 23.6.81.

(BY ORDER OF THE GOVERNOR)

M.RAGHUPATHY
COMMISSIONER & SECRETARTY TO GOVT. "

3. As per the said Government Order, all those employees in the State Transport undertakings, who were declared unfit to continue in the post of drivers for eye defect or for any other ailments and while they could be discharged on medical grounds and their service benefits settled, they should also be subsequently provided with alternate employment in posts like "helpers", depending upon their qualifications, experience and suitability for the new post without consulting the employment exchange.

4. In identical case in W.P.No.4310 of 2001 (A. JOHN PETER v. THE GENERAL MANAGER, TAMIL NADU TRANSPORT CORPN. LTD., KARAIKUDI), D. Murugesan, J, by order dated 21.3.2003, following the decisions in NARENDRA KUMAR CHANDLA v. STATE OF HARYANA AND OTHERS reported in (1994) 4 SCC 460, KUNAL SINGH v. UNION OF INDIA reported in 2003 AIR SCW 1013 and M. GOPAL v. MANAGEMENT OF STATE EEXPRESS TRANSPORT CORPORATION LIMITED reported in 2000 WLR 917 held that the petitioner is entitled to a suitable alternate employment with protection to his last drawn salary and continuity of service with all benefits.

5. In yet another case in W.P.No.20508 of 2000 (K. CHINNAPPAN v. THE MANAGEMENT OF TAMIL NADU, STATE TRANSPORT CORPORATION (COIMBATORE DIVISION
P I) LTD., COIMBATORE, K. Raviraja Pandian, J, by order dated 9.4.2003,

following the decision of the Apex Court in KUNAL SINGH v. UNION OF INDIA reported in 2003 AIR SCW 1013, directed the respondent to assign suitable light work particularly in the nature of desk work.

6. The Apex Court in KUNAL SINGH v. UNION OF INDIA reported in 2003 AIR SCW 1013 held that if the appellant has acquired disability during his service and found not suitable for the post he was holding, he could be shifted to some other post with same pay scale and service benefits and if it is not possible to adjust him against any post, he could be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

7. In view of the ratio laid down by the Apex Court in KUNAL SINGH v. UNION OF INDIA reported in 2003 AIR SCW 1013 and in the light of G.O.Ms.No.746, Transport, dated 2.7.1981, the respondents are directed to consider the representation of the petitioner in the light of G.O.Ms.No.746 Transport dated 2.7.1981 and provide suitable employment depending upon the petitioner's qualification, experience and suitability without consulting the employment exchange and pass orders within one month from the date of receipt of a copy of this order.

This writ petition is allowed. No costs. WPMP Nos. 58216 and 58217 of 2002 are closed.

Index : Yes
Internet: Yes

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To

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State Express Transport Corporation Ltd.
Pallavan House
Madras 2.

2. The Branch Manager
State Express Transport

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